
TARGET POPULATIONS:

1210

INCOMPETENT TO STAND TRIAL [PC 1370]

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PRECOMMITMENT PROCESS

Introduction

Under California law, no person formally charged with commission of any criminal offense may be tried or adjudged to punishment while "mentally incompetent" [PC 1367(a)].

At any time during a criminal proceeding and prior to imposition of sentence, by motion of either counsel for the prosecution or defense, or by the court on its own motion, an order may be made to inquire into the mental competency of the defendant [PC 1368].

Definition [PC 1367(a)]

A defendant is mentally incompetent if, as a result of mental disorder or developmental disability, the person is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.

If the person is found to be mentally incompetent, further criminal proceedings are thereupon suspended by the court until the person is restored to competence or the matter is otherwise disposed of according to law.

Misdemeanant IST [PC 1367(b)]

Legislation enacted in 1992 established Penal Code provisions which apply to a defendant who has been charged with a misdemeanor [PC 1367.1 and PC 1370.01]. County mental health departments are responsible for the evaluation and treatment of these patients. CONREP programs are only responsible for those patients who have been charged with a felony offense as indicated above.

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Order to Evaluate [PC 1370(a)(2)]

When a person is found mentally incompetent, the court orders an evaluation for placement to be conducted by the CONREP program within 15 days. The following documents should be provided by the court:

- * Court order to evaluate;
- * Copy of the arrest report and formal complaint/information regarding the offense(s) charged;
- * Psychiatric/psychological reports; and
- * State summary of criminal history information ("Rap Sheet") [PC 11105.1 authorizes reception of this information].

The clerk of the court should be contacted if the above documents are not received.

Placement Evaluation

The CONREP program evaluates the person to determine the most appropriate treatment facility or site. The evaluation must encompass, at a minimum:

- * Review of legal/medical documents; and
- * Consideration of both clinical and security needs.

When considering direct outpatient placement, the evaluation shall also encompass:

- * Personal interview; and
- * Collateral contact(s) with family, alleged victims and/or significant others.

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Inpatient Requirement [PC 1601(a)]

Penal Code section 1601(a) requires a 180 day inpatient stay prior to outpatient treatment for those charged with particular crimes. For a detailed listing of the offenses, refer to **Eligibility** in the **ADMISSION PROCESS** section of this manual.

Persons with Developmental Disabilities [PC 1367]

PC 1370.1 applies to a person who is incompetent as a result of a developmental disability and to a person who is incompetent as a result of a mental disorder, but is also developmentally disabled. Any person found to be developmentally disabled should be referred back to court per PC 1367.

Placement Recommendation

Justification

The recommendation for placement in a specific treatment facility or site must be accompanied by a justification for the placement that considers:

- * Applicability of PC 1601(a);
- * Need for a secure environment;
- * Estimated length of treatment;
- * Location of facility;
- * Availability of resources;
- * State hospital admission policies; and
- * Plan for payment of services if other than state hospital.

Placement Alternatives

Placement alternatives include:

- * State hospital;
- * Local public/private inpatient treatment facility;
- * Community outpatient treatment, unless precluded by PC 1601(a); or
- * Recommendation to the court to refer to Regional Center if person is developmentally disabled.

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Report to the Court

A written report signed by the Community Program Director is to be submitted to the court within 15 judicial days of the court order to evaluate. The report must include:

- * Current legal status [PC 1370] and underlying criminal charge;
- * Date and place of contact(s);
- * Person(s) contacted;
- * Current mental status;
- * Assessment of need for medication;
- * Recommendation for placement; and
- * Suggested focus of treatment to establish competence, including:
 1. Appropriate management of impulsive behaviors;
 2. Assessment of need for substance abuse treatment; and
 3. Patient understanding of his/her mental disorder, including acceptance of medication.

Court Order for Commitment

After considering the CONREP placement recommendation, the court determines the most appropriate treatment site. The court may refer a person with a developmental disability to a Regional Center for an evaluation or formally commit the individual to:

- * State hospital (See **STATE HOSPITAL SERVICES** section of this manual for DMH hospital placement policies);
- * Local public/private inpatient treatment facility; or
- * Community outpatient treatment.

Copies of the court order for commitment should be sent to the Community Program Director and filed in the patient's chart.

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COMMITMENT TO TREATMENT

State Hospital

Conditions for Placement

A person is committed to a state hospital under these circumstances:

- * An underlying criminal charge requires a minimum of 180 days in a locked setting [PC 1601(a)]; or
- * The court determines that the person needs intensive, long-term treatment in a secure environment, not available in the community.

State Hospital Assignment

Atascadero and Patton State Hospitals are the primary state inpatient facilities for judicially committed patients. The specific policies which determine state hospital placement are described under the **STATE HOSPITAL SERVICES** section of this manual.

Local Inpatient Treatment

Conditions for Placement

A person may be committed to a local public or private inpatient treatment facility approved by the Community Program Director. The means of funding local inpatient treatment should be assessed prior to making such a recommendation.

Types of Facilities

Local inpatient treatment facilities must possess a current valid license that permits the locked treatment of persons with mental disorders [Health and Safety Code Section 1250]. These facilities include:

- * Locked acute psychiatric facility;
- * Locked skilled nursing facility; or
- * Locked intermediate-care facility.

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Outpatient Treatment

Individuals may be placed directly into an outpatient treatment program under these circumstances:

- * The court determines that the required treatment is available in such a program;
- * The person is not a danger to the health and safety of him/herself or others; and
- * The person does not require placement in a secure setting or is not prohibited from outpatient placement [PC 1601(a)].

The criteria for direct placement on outpatient status is contained in PC 1600. The referral process by which a patient on inpatient status is committed to outpatient community treatment is described in more detail in the **ADMISSION PROCESS** section of this manual.

Focus of Treatment

Treatment pursuant to PC 1370 shall be directed toward restoring the patient's trial competency. As the patient has not been convicted of any charge, it is inappropriate to address culpability or to insist on the patient's acceptance of responsibility for the alleged offense.

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COMMITMENT TO TREATMENT

Transfer of Treatment [PC 1370(a)(5)]

Upon the recommendation of the Medical Director of the state hospital, the court may order the transfer of patients committed to a state hospital to a public/private inpatient treatment facility approved by the Community Program Director.

The court may also order the transfer of patients committed to an inpatient treatment facility to a state hospital or other inpatient treatment facility upon the written recommendation of the Community Program Director.

Progress Reports [PC 1370(b)(1)]

Within 90 days of the original finding of incompetence, and quarterly following commitment to outpatient status [PC 1605(d)], a report is due to the court on the progress of the patient towards recovery of mental competence.

When the patient is committed to an inpatient facility, the Medical Director of the facility will submit a written report to the court and to the appropriate CONREP program. For those patients in a CONREP program, the Community Program Director will submit the report to the court.

All reports are filed in the patient's chart and must document the status and progress of the patient. For more detailed information on the contents of these reports, please refer to **Quarterly Progress Reports** in the **REPORTS & ANNUAL REVIEW PROCESS** section of this manual.

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COMMITMENT TO TREATMENT

Mandatory 18th Month Review [PC 1370(b)(2)]

Any patient who has remained in treatment (inpatient and/or outpatient) for 18 months following the original finding of incompetence, shall be returned to the committing court for a hearing. The court will review the patient's progress in treatment and mental competency. The court may determine:

- * Patient has regained mental competency and the criminal proceedings will resume;
- * Patient remains mentally incompetent and will return to an appropriate inpatient or outpatient treatment program;
- * Patient is developmentally disabled and will be referred to a Regional Center for placement; or
- * Patient remains mentally incompetent and appears to be gravely disabled (there is no substantial likelihood the patient will regain mental competency in the foreseeable future) and will be referred for a "Murphy" conservatorship hearing pursuant to WIC 5008(h)(B).

Annual Review

Once a patient has been committed to outpatient status, PC 1606 requires an annual court report and renewal of that commitment. Please refer to the **REPORTS & ANNUAL REVIEW PROCESS** section of this manual for detailed information on this process.

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COMMITMENT TO TREATMENT

Maximum Term of Commitment [PC 1370(c)(1)]

Length of Treatment

A person found mentally incompetent may be committed for treatment no longer than three years or a period equal to the maximum term of imprisonment the court could have imposed, if the person had been found guilty of the offense as charged, whichever is shorter.

Court Options

The commitment order from the court includes a maximum term of commitment statement. If the patient has not recovered mental competence at the end of the maximum term of commitment, he/she will be returned to court for a hearing. The court may:

- * Dismiss the criminal charge(s); or
- * Order the initiation of WIC 5350 conservatorship proceedings if patient appears to be gravely disabled as defined in WIC 5008(h)(B).

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RECOVERY OF MENTAL COMPETENCE

Certification of Competence [PC 1372(a)(1)]

When the program to which the patient has been committed determines that the patient has regained mental competence, the medical director (inpatient programs) or Community Program Director (CONREP) shall certify this fact to the court of commitment.

Competency Hearing [PC 1372(c)]

On receipt of the certification of competence, the court will schedule a hearing and will notify CONREP of the date, time, and place of such hearing. The court will also advise the program of the results of the hearing, a copy of which should be placed in the patient's chart.

Competency Not Restored [PC 1370(a)(1)]

If the court determines that the patient is not yet restored to mental competency, the court may:

- * Return the patient to an appropriate inpatient or outpatient program for continued treatment in order to regain competency;
- * Refer the patient to alternative treatment facility for further inpatient or outpatient treatment in order to regain competency; or
- * Refer the patient for a conservatorship hearing based on determination of grave disability as defined in WIC 5008(h)(B).

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RECOVERY OF MENTAL COMPETENCE

Competency Restored [PC 1372(d)]

If the court determines that the patient has been restored to mental competency, the court will terminate the commitment for treatment and reinstitute criminal proceedings.

Placement Pending Court Hearing [PC 1372(e)]

In order to maintain restored competency until completion of a trial, treatment in a secure facility approved by the Community Program Director or County Mental Health Director or other facility where treatment has been provided pursuant to PC 1370 may be recommended by the director of a state hospital.

Since the County Mental Health Director has financial responsibility for PC 1372(e) placements, in all cases, the Community Program Director should defer this authority to approve these placement facilities to the County Mental Health Director.